THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.3973 OF 2006

ORDER:

The petitioners herein, have deposited a sum of Rs.40,22,000/- with the 1st respondent-Bank under the Capital Gains Account Scheme, 1988, to get the benefit of exemption under Section 54 of the Income tax Act, 1961 with regard to the sale of their immovable properties.

As per the Scheme the assessee, in order to seek exemption, can deposit the amount either in the form of savings deposit, or in the form of term deposit. Admittedly, the petitioners have deposited the amount in term deposit, which is classified as account-B under the Scheme. In the month of October, 2005, the petitioners made a request to the 1st respondent-bank to transfer the funds from their term deposit by opening a savings account, which is classified as account-A. However, the 1st respondent-bank insisted that the petitioners should get approval of the concerned Assessing Officer for such transfer of funds from one account to another. A letter dated 1.2.2006 was addressed by the 1st respondent-bank to the said effect, requesting the petitioners to submit clearance from the concerned assessing officer in Form-G. Aggrieved by the said action, this writ petition is filed contending *inter alia*, that the Scheme does not contemplate submission of clearance in Form-G from the Assessing Officer, as required by the 1st respondent-bank.

I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the 1st respondent-bank, and perused the material on record.

In exercise of the powers conferred by Sections 54(2); 54B (2); 54D(2); 54F(4) and 54G(2) of the Income-tax Act, 1961, the Central Government made a scheme called Capital Gains Accounts Scheme,

1988. The said Scheme applies to all the assessees, who are eligible for exemption under Section 54; 54B; 54D; 54F or 54G of the Income-tax Act, 1961. Para 2 of the said Scheme defines 'account-A' and 'account-B' as under:

> 2(b) "account-A" means deposit account-A mentioned in paragraph 4 of this Scheme:
>
> (c) "account-B" means deposit account-B mentioned in paragraph 4 of this Scheme"

In Paragraph 4 of the Scheme, the types of deposits have been specified as under:

> "**Types of deposits.**
>
> 4 (1) There shall be two types of deposit accounts, namely-
>
> (I) "Deposit account-A",; and
>
> (ii) "Deposit account-B".
>
> (2) The deposit made under account-A shall be I the form of 'savings deposit' and subject to the other provisions of this Scheme, withdrawals under this account can be made from time to time by the depositor.
>
> (3) The deposit made under account-B shall be in the form of 'term deposit' with an option to the depositor to keep the deposit as cumulative or non-cumulative deposit. Except as provided under paragraph 7 and paragraph 9, withdrawals under this account can be made only after the expiry of the period for which the deposit under this account has been made and accepted.
>
> (4) Such deposits may be made in one lump sum or in instalments at any time or before the due date of furnishing the return of income under sub-section (1) of Section 139 of the Act as is applicable in the case of the depositor."

Paragraph 7 of the Scheme permits transfer and conversion of account-B to account-A, subject to the procedure specified thereunder. The said paragraph 7 runs as under:

> **Transfer and conversion of the account.**
>
> 7(1) A depositor may, if he so desires, apply for transfer of his account or accounts, from one deposit office to another deposit office of **the same bank**.

(2) A depositor having a deposit in account-B may, at any time, if he so desires, apply in Form-B or as near thereto as possible, together with his deposit receipt, for transfer of the account standing to his credit in account-B to his deposit in account-A opened under the same section of the Act under which the said account-B was opened and the request of the depositor may be accepted subject to the other provisions of this Scheme.

3(a) A depositor while apply under sub-paragraph (2) shall furnish in Form-B the requisite particulars of his account-A to which the amount from account-B is required to be transferred;

(b) Where the depositor is not having a deposit in account-A, he shall state such fact and also make a request for opening an account-A in his name, as specified in Form- B.

(4) If the request under sub-paragraph (2) has been made for transfer of amount standing to the credit in account-B, before the expiry of the specified period for which the deposit in account-B was made, such request shall be treated as premature withdrawal of amount from deposit I the said account-B shall be calculated by the deposit office in accordance with the provisions of sub-paragraph (4) of paragraph 8.

(5) ……..

(6) ……..

(7) ……..”

In the case on hand, as noted above, the petitioners made a term deposit in account-B, and they wanted to transfer the funds from account-B to account-A by opening account-A (savings account).

As per paragraph 4(3) of the Scheme, in respect of the deposit made in account-B, withdrawal can be made only after expiry of the period for which the deposit under the said account has been made, except as provided under paragraphs 7 and 9, which provide for transfer of the account and withdrawal from the account, respectively. Hence, it is not in dispute that the petitioners are entitled to seek transfer of their deposit in account-B.

Coming to the procedure to be followed, paragraph 7(2) provides that the depositor has to apply in Form-B together with deposit receipt for transfer of the amount standing to his credit in account-B to account-A. Paragraph 7(3)(a) mandates that while making such application in Form-B, the depositor shall furnish the requisite particulars of his account-A, to which the amount from account-B is required to be transferred. If the depositor is not having account-A, under paragraph 7(3)(b), he has to state such facts and make a request for opening account-A in his name as specified in Form-B. Paragraph 7(4) makes it clear that such request of the depositor shall be treated as premature withdrawal of the deposit in account-B. Paragraph 9(5) & (6) also make it clear that such request for transfer of deposit in account-B to account-A before expiry of the specified period, for which the deposit in account-B was made, shall be treated as **premature withdrawal**. The said Paragraph runs as under:

> **"Withdrawal from the account.**
>
> 9(1) ……..
> (2)……
> (3)……
> (4)……..
>
> (5) A depositor intending to make withdrawal from his deposit in account-B, shall first apply in the manner prescribed in sub-paragraph (2) of paragraph 7 for transfer of the amount standing to his credit in account-B to account-A and may withdraw the requisite amount in the same manner and subject to the same conditions as stipulated in sub-paragraphs (1) and (3) after the amount standing to his credit in his account-B has been credited to his account-A by the deposit office.
>
> (6) In case the application under sub-paragraph (5) is made before the expiry of the specific period for which the deposit in account- was made, such withdrawal will be treated as premature withdrawal, and the amount of interest accrued, if any, shall be calculated subject to the provisions of sub-paragraph (4) of paragraph 8.
>
> ……."

The specific case of the petitioners is that they have made a request in Form-B for transfer complying with the procedure as noted

above. Since the above noted procedure does not require clearance from the Assessing Officer in Form-g, it is contended by the petitioners that the action of the 1st respondent-bank in insisting upon such clearance, is arbitrary and illegal.

The case of the 1st respondent-bank is that as per the Scheme transfer from account-B to account-A is permissible only after closure of account-B and since closure of the account under the Scheme requires clearance from concerned Assessing Officer in Form-G, the petitioners were asked to submit such clearance. The 1st respondent-bank placed reliance upon paragraph 13(1) of the Scheme, which deals with closure of the account and contended that the application has to be made only with the approval of the Assessing Officer, who has jurisdiction over the depositor, in Form-G. Thus, according to the 1st respondent, unless clearance from the Assessing Officer in Form-G is produced, the request of the petitioners for transfer of amount from account-B to account-A, cannot be considered.

Paragraph 13 of the Scheme, relied upon by the 1st respondent-bank may be extracted as under:

> **Closure of the account.**
>
> 13 (1) If a depositor desires to close his account, an application shall be made with the approval of the Assessing Officer who has jurisdiction over the depositor to the deposit office in Form-G or as near thereto as possible, and the deposit office shall pay the amount of balance including interest accrued, to the credit in the account of the depositor by means of crediting such amount **to any bank account of the depositor**.
>
> (2) ……
>
> (3) ……..
>
> ……..”

A plain reading of paragraph 13 *vis-a-vis* paragraph 7, makes it

clear that the two provisions are meant for different purposes. Whereas, paragraph 7 provides for transfer, or conversion of the account from one deposit to another deposit of the same bank, paragraph 13 provides for closure of the account.

May be that the petitioners, in the case on hand, wanted to transfer the entire amount lying in account-B, however, on that ground it cannot be treated as closure of the account. The word 'closure' connotes 'an act or process of closing something'. The dictionary meaning of the word 'close' is 'bring or come to an end'. Even paragraph 13 of the Scheme, which provides for closure of the account, makes it clear that consequent on closure of the account, the deposit office shall pay the amount of balance including interest accrued, by means of crediting such amount to any back account of the depositor. In other words, the account of the depositor under the Scheme in that bank would come to an end. On the other hand, the transfer of the account under paragraph 7 would be from one account to another account in the same bank. By resorting to transfer of the account under paragraph 7, the account under the Scheme will not come to an end. Obviously, that is the reason why the transfer of Account under paragraph 7 did not mention clearance from the Assessing Officer, but it was made mandatory only for the purpose of closure of the account under paragraph-13 of the Scheme.

For the aforesaid reasons, transfer of the account cannot be equated to the closure of the account under paragraph 13, even where the entire amount is withdrawn. Hence, the 1st respondent-bank is not justified in insisting upon clearance from Assessing Officer as a condition precedent for considering the request of the petitioners for transfer of deposit from account-B to account-A.

Accordingly, the writ petition is disposed of with a direction to the 1st respondent-bank to consider the request of the petitioners made in Form-B for transfer of funds from account-B to account-A by opening account-A, without insisting approval from the Assessing

Officer in Form-G, and to pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of two weeks from the date of receipt of a copy of this order. No costs.

(G. ROHINI, J.)

July 13, 2006.
Kgr

Furnish CC in one week.

L.R. Copy to be marked.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.3973 OF 2006

July 13, 2006.

Between:

Sadula Janardhan (HUF) and others. .. Petitioners.

And

State Bank of Hyderabad,
Main Branch, Nizamabad,
represented by its Manager and another. .. Respondents.

***THE HON'BLE Ms. JUSTICE G. ROHINI**

WRIT PETITION No.3973 OF 2006

Dated : July 13, 2006.

Sadula Janardhan (HUF) and others. ...

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AND

State Bank of Hyderabad,
Main Branch, Nizamabad,
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! Counsel for Petitioners: Sri B. Chandrasen Reddy.

^Counsel for Respondents: Sri B. Narasimha Sarma
Sri Addepalli Suryanarayana.
(for Respondent No.1)

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